

SECRET FILE COPY
ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 93M-518
Washington, D.C. 20554

FCC MAIL SECTION

In re Applications of

MM DOCKET NO. 93-127

32152

JANICE M. SCANTLAND

File No. BPH-920113MC

AUG 11 2 42 PM '93

ROBERT G. CASAGRANDE

File No. BPH-920115ME

DISPATCHED BY

For Construction Permit for a
New FM Station on Channel 282A
in Richwood, Ohio

MEMORANDUM OPINION AND ORDER

Issued: August 9, 1993

Released: August 11, 1993

1. Under consideration are an unopposed Motion for Summary Decision, filed on July 23, 1993, by Janice M. Scantland ("Scantland"); a Joint Petition for Approval of Settlement, filed on July 30, 1993, by Scantland and Robert G. Casagrande ("Casagrande"); and comments in support of the joint petition, filed on August 6, 1993, by the Mass Media Bureau ("Bureau").

Motion for Summary Decision

2. Scantland seeks summary decision of the site availability issue (Issue 1) specified against her in the Hearing Designation Order in this proceeding, 8 FCC Rcd 3074 (1993) ("HDO"). The issue was specified because, prior to the designation of this case for hearing, Scantland proposed a change in transmitter sites but neglected to submit the required certification that she had obtained assurance of the availability of her proposed site by contacting the owner or person possessing control of the site. HDO at para. 4.

3. In support of her motion, Scantland relies on an amendment filed on June 1, 1993, wherein she submitted the required site certification. The amendment was accepted by Order, FCC 93M-414, released June 28, 1993. Scantland also relies on the declaration of Everett E. Dotson, the co-owner of the site, who confirms that, prior to designation, he agreed to permit Scantland to specify his property as her proposed transmitter site, and that he gave Scantland a letter to that effect in December 1992. Dotson further declares that the site is still available for Scantland's use.

4. Scantland's motion will be granted and Issue 1 will be resolved in her favor. It is clear from Scantland's submission that the amended transmitter site specified in her application was available prior to the designation of this case for hearing, and is still available for her use. See Elijah Broadcasting Corporation, 5 FCC Rcd 5350, 5351 (1990). There are, consequently, no genuine questions as to any material fact remaining for determination at the hearing with regard to the site availability issue, and Scantland is entitled to summary decision thereof. See Section 1.251(d) of the Commission's Rules.

Joint Petition for Approval of Settlement

5. Scantland and Casagrande have entered into a Settlement Agreement ("Agreement") which has been submitted for approval. Pursuant to the Agreement, Casagrande will dismiss his application for monetary consideration from Scantland, not to exceed \$33,000, in reimbursement for the legitimate and prudent

expenses of Casagrande in preparing, filing, prosecuting and settling his application. The Bureau supports approval of the Agreement.

6. The Joint Petition will be granted, the Agreement will be approved, and the application of Casagrande will be dismissed. The applicants have demonstrated compliance with Section 73.3525(a) of the Commission's Rules. Specifically, the applicants have shown that their respective applications were not filed for the purpose of reaching or carrying out a settlement agreement, that the amount promised is all that will be paid, that such amount is not in excess of the legitimate and prudent expenses of Casagrande, that there are no ancillary agreements, and that approval of the Agreement will serve the public interest. In addition, Casagrande has provided an itemized accounting of his reimbursable expenses, and has established that such expenses exceed the amount of consideration to be paid by Scantland.

7. Given the resolution of Issue 1 in Scantland's favor and the approval of the Agreement, there exists no impediment to a grant of the Scantland application, and it will be granted.

Accordingly, IT IS ORDERED that the Motion for Summary Decision filed on July 23, 1993, by Scantland IS GRANTED, and Issue 1 IS RESOLVED in her favor.

IT IS FURTHER ORDERED that the Joint Petition for Approval of Settlement filed by Scantland and Casagrande on July 30, 1993, IS GRANTED; that the Settlement Agreement IS APPROVED; that reimbursement to Casagrande in the amount of \$33,000 IS AUTHORIZED; and that the above-captioned application of Robert G. Casagrande IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that, in light of the dismissal of the Casagrande application, the following pleadings ARE DISMISSED as moot: (a) Petition for Leave to Amend, filed on June 8, 1993, by Casagrande; (b) Partial Opposition to Petition for Leave to Amend, filed on June 11, 1993, by Scantland; (c) Supplement to Petition for Leave to Amend, filed on June 24, 1993, by Casagrande; (d) Petition to Enlarge Issues, filed on June 4, 1993, by Scantland; (e) Supplement to Petition to Enlarge Issues, filed on June 11, 1993, by Scantland; (f) Erratum to Supplement, filed on June 15, 1993, by Scantland; (g) Opposition to Petition to Enlarge Issues, filed on July 6, 1993, by Casagrande; (h) Motion for Leave to File Erratum to Opposition to Petition to Enlarge Issues, filed on July 12, 1993, by Casagrande; and (i) Erratum to Opposition to Petition to Enlarge Issues, filed on July 12, 1993, by Casagrande.

IT IS FURTHER ORDERED that the above-captioned application of Janice M. Scantland for a construction permit for a new FM station on Channel 282A at Richwood, Ohio, IS GRANTED.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Arthur I. Steinberg

Arthur I. Steinberg
Administrative Law Judge